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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1098. 711 398 126

THE KENTUCKY CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF BOURBON, IN THE STATE OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED OCTOBER 15, 1885.

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from Bourbon county circuit court	2	1
Caption	2	1
Petition	2	1
Exhibit "A"—Notice of auditor of public accounts to clerk of Bourbon county court	6	3
"B"—Notice of auditor of public accounts to clerk of Bourbon county court, Oct. 1, 1879	7	3
Return on summons	8	4
Order overruling demurrer	8	4
Order for submission	8	4
Demurrer to petition	9	5
Answer to petition	9	5
Demurrer to answer	14	6
Order sustaining demurrer to answer	14	7
Order granting further time to plead	14	7
Amended answer	15	7
Demurrer to amended answer	20	9
Judgment	20	9
Order granting appeal to superior court	21	10
Order setting aside order for appeal to superior court	21	10
Order granting appeal to court of appeals	22	10
Assignment of errors	22	10
Schedule	23	10

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	Original.	Print.
Execution	23	10
Supersedeas bond	24	12
Supersedeas	26	12
Jailor's return on supersedeas	26	12
Sheriff's return on execution	27	12
Clerk's certificate	27	12
Statement of parties	28	13
Hearing and submission	28	13
Judgment	29	13
Opinion	29	13
Orders extending time to file petition for rehearing	35	15
Submission of motion for rehearing	35	15
Petition for rehearing	36	16
Reply to petition for rehearing	66	26
Order overruling petition for rehearing	81	31
Bond	82	32
Clerk's certificate	83	32
Petition for writ of error	85	33
Writ of error	89	34
Citation	91	35
Service of citation	92	35
Assignment of errors	93	35

1 THE COMMONWEALTH OF KENTUCKY:

The Court of Appeals.

Pleas before the Hon. Thomas H. Hines, chief justice, and William S. Pryor, Joseph H. Lewis, and W. H. Holt, judges of the court of appeals at the capital, in the city of Frankfort, on the 24th day of January, 1885.

Appeal from a Judgment of the Bourborn Circuit Court.

THE KENTUCKY CENTRAL RAILROAD COMPANY, App'l'ts,
against
BOURBON COUNTY, Appellee.

Be it remembered that heretofore (to wit), on the 11th day of December, 1882, the appellants filed in the office of the clerk of the court of appeals of Kentucky the following transcript, viz:

2 Pleas before the Hon. B. F. Buckner, judge Bourbon circuit court, court-house, Paris, Ky., Oct. 20th, 1882.

Style of Action.

BOURBON COUNTY, Pl'ff,
against
THE KENTUCKY CENTRAL RAILROAD COMPANY, Def't.

Petition.

Be it remembered that heretofore, to wit, September 4th, 1880, the plaintiff filed its original petition herein, which is as follows, viz:

"The plaintiff, the County of Bourbon, states that the defendant, The Kentucky Central Railroad Company, is a corporation, doing business in and operating a railroad in this State under and by virtue of the authority of the laws of this State, — miles of the railroad so operated by them lying in the county of Bourbon, and the said company ow-ing in said county, in addition to said — miles of road, several lots of land, on which they have depots and other conveniences for operating their road; all of which are subject, under
3 the laws of the State, to taxation for State and county purposes, and which has been assessed, as authorized by act of Legislature, approved April 3d, 1878, by the board of equalization for taxation; that in the year 1878 eight $\frac{50}{100}$ miles (main stem) of said road, lying in Bourbon county, was assessed as follows:

Main stem, $8\frac{50}{100}$ miles, at 14,00- per mile	119,000
Other property	4,300
Total for county taxation	$123,300

(One hundred & twenty-three thousand three hundred dollars) subject to taxation for State revenue and county purposes. A certified copy of the auditor's report of said assessment is filed herewith as part hereof, marked "A."

Plaintiff states that, by an order of the Bourbon county court made at its Nov. term, 1877, a majority of the justices in and for said county being present and concurring therein, the rate of taxation in said county was fixed for the year 1878 at —— dollars on the head and 22 cents on each one hundred dollars' worth of property (being 5 cents on the $100 for county assessment, 4 cents on $100 for turnpike tax, and 13 cents on $100 jail tax), and plaintiff states
4 that, in accordance with said assessment and levy, the amount of taxes due Bourbon county by defendant for the year 1878 is two hundred and seventy-one $\frac{26}{100}$ dollars, no part of which has ever been paid. Wherefore plaintiff prays judgment for the sum of $291.26, with legal interest thereon from the 10th day of October, 1878, until paid, and the further sum of five per cent. damages on said debt and interest, and all other proper relief.

Plaintiff further states the main stem, being 8½ miles of said railroad, lying in the county of Bourbon, was assessed by said board of equalization for the year 1879 as follows:

Main stem, 8½ miles, at $15,000 per mile	$127,500
Other property	4,300
Total for county taxation	$131,800

A certified copy of the auditor's report of said assessment is filed herewith as part hereof, marked "B." That by an order made by the Bourbon county court at its November term, 1878, a majority of
5 the justices in and for said county being present and concurring therein, the rate of taxation in said county was fixed for the year 1879 at $1.50 on the head and 33 cents on each one hundred dollars' worth of property, being county assessment, 10 cents; jail tax, 3 cents, and 20 cents to pay interest on bonds of the Covington and Lexington and Maysville and Lexington Railroad Company, and plaintiff states that in accordance with said assessment and levy the amount of taxes due Bourbon county by the defendant for the year 1879 is four hundred and thirty-four and $\frac{94}{100}$ dollars, no part of which has ever been paid.

Wherefore plaintiff prays judgment against the defendant for $434.94, with interest from 16th October, 1879, until paid, and five per cent. damages on $171.34, with interest from 10th Oct., 1879, and 7 per cent. damages on R. R. tax, $263.60, with interest from said date, and for all other proper relief. The company having failed to
6 pay said taxes for 1878 and 1879, or any part thereof, the same has been by Chas. Tallbott, sheriff of Bourbon county, returned delinquent.

BEN. G. PATON, *Att'y.*

Exhibit "A," referred to above, is as follows, viz:

EXHIBIT "A."

STATE OF KENTUCKY,
OFFICE OF AUDITOR OF PUBLIC ACCOUNTS,
FRANKFORT, KENTUCKY, ——, 187–.

To the clerk of Bourbon county court.

SIR: In obedience to the provisions of an act entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same," approved April 3rd, 1878, I hereby notify you that the board of equalization has returned to me that portion of the Kentucky Central railroad for taxation in your county as follows, to wit:

Bourbon county, main stem, $8\frac{50}{100}$ miles, at $14,000 per mile	$119,000
Other property	4,300
Total for county taxation	$123,000

For city or town taxation:

In city of Paris, main stem, $\frac{76}{100}$ miles, at $14,00- per mile	$10,640
Other property	4,000
Total for city taxation	$14,640

Very respectfully, your obedient servant,
D. HOWARD SMITH, *Auditor.*

A copy.
Attest:
J. M. HUGHES,
Clerk Bourbon County Court.

Exhibit "B" referred to is as follows, viz:

EXHIBIT "B."

STATE OF KENTUCKY,
OFFICE OF AUDITOR OF PUBLIC ACCOUNTS,
FRANKFORT, KENTUCKY, *October* 1*st*, 1879.

To the clerk of Bourbon county court.

SIR: In obedience to the provisions of an act entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same," approved April 3rd, 1878, I hereby notify you that the board of equalization has returned to me that portion of the Kentucky Central railroad for taxation in your county as follows, to wit:

Bourbon county, main stem, $8\frac{50}{100}$ miles, at $15,000 per mile	127,500
Other property	4,300
Total for county taxation	$131,800

For city of town taxation:

In city of Paris, main stem, $\frac{76}{100}$ miles, at $15,000 per mile	$11,400
8 Other property	4,000
Total for city taxation	$15,400

Very respectfully, your obedient servant,

D. HOWARD SMITH,
Per L. D. HOLLOWAY, *Clk.*

A copy.
Attest:

J. M. HUGHES,
Clerk Bourbon County Court.

Summons.

And on the same day, viz., Sept. 4th, 1880, summons issued on the foregoing petition, upon which the sheriff of Bourbon county, to whom it was addressed, made return as follows, to wit:

Sheriff's Return.

Executed on the Ky. Central Railroad Company by delivering a copy to W. B. Ersinger, as agent of said railroad company, this Sept. 6th, 1880.

C. TALBOTT, *S. B. C.*,
By JOHN B. NORTHCOTT, *D. S.*

And afterward, to wit, October 21st, 1880, the following order was entered herein, viz:

Def't Files Dem'r to Petition.

The defendant filed a general demurrer to the plaintiff's petition herein, which being heard, it is ordered to be overruled; to which defendant excepted.

Answer Filed.

The defendant filed its answer herein; to which the plain-
9 tiff filed a general demurrer.

Pl'ff Filed Demurrer to Answer.

And it is ordered that this case be submitted on plaintiff's demurrer to defendant's answer.

The defendant's demurrer to petition is as follows, viz:

Demurrer to Petition.

The defendant demurs to the 1st & 2d paragraphs of plaintiff's petition, as neither of said paragraphs states facts sufficient to constitute a cause of action against it.

THE KY. C. R. R. CO.,
By STEVENSON, O'HARA AND BRYAN, *Att'ys.*

The defendant's answer referred to in the foregoing order is as follows, to wit:

Defendant's Answer.

The defendant, not waiving its demurrer herein, but insisting and relying upon same, and denying plaintiff's right to maintain this action against it, answering, says that it is not indebted to the county of Bourbon in the sum of $291.26, with interest from October 10th, 1878, for taxes, nor in any other sum whatever on any account.

It denies that it is indebted to plaintiff in the sum of
10 434.94, with interest from October 10th, 1879, for taxes, or in any sum whatever on any account.

It says it was incorporated by an act of the General Assembly of the Commonwealth of Kentucky approved Feb. 22d, 1871, entitled "An act to incorporate the Kentucky Central Railroad Company," under which act of incorporation it was organized as a company and is now acting. It says that said act of incorporation provided that its incorporators should be and were invested with "all the powers, privileges, rights, immunities, and franchises" of the Covington and Lexington railroad. It says that the said Covington and Lexington railroad was the successor of the Licking and Lexington Railroad Company, which latter road was incorporated by an act of the General Assembly of the Commonwealth of Kentucky approved 15th March, 1847, and entitled "An act to incorporate the Licking and Lexington Railroad Company," and under which said company was organized, and that said Licking and Lexington Railroad Company was changed to the Covington and Lexington Rail-
11 road Company by an act of the General Assembly of the Commonwealth of Kentucky approved February 27th, 1849, entitled "An act to amend the charter of the Licking and Lexington Railroad Company," which amendment to its charter was accepted by the Licking and Lexington Railroad Company, who organized and proceeded to act, and did act, under said charter as amended. It says that the charter of the said Covington and Lexington Railroad Company was by an act of the General Assembly of the Commonwealth of Kentucky approved March 3d, 1851, amended, said act being "An act to amend the charter of the Covington and Lexington Railroad Company," which amendment was accepted by the said Covington and Lexington Railroad Company, adopted by it, and made part of its charter, and under which it

operated, and by which it was governed. It says that, among other things, said act of March 3d, 1851, provides:

"SEC. 4. That on the first day of January next after the first declarations of dividends on the capital stock of said railroad
12 company, and on every first day of January thereafter, it shall be the duty of the president and directors of said company to pay into the treasury of this Commonwealth a tax on each one hundred dollars' worth of stock in said railroad company, equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more." * * *

It says by virtue of said acts of the General Assembly of the Commonwealth of Kentucky, all of which were accepted by the said companies respectively, and each of which acts it here pleads as if fully set out, and upon which it relies, the rate of tax it shall pay is fixed, and that said tax shall be for State revenue, and that it shall not be liable for any further or any other tax.

Wherefore pleading said acts of the General Assembly of the Commonwealth of Kentucky, to wit:

"The act approved February 22d, 1871, entitled "An act to incorporate the Kentucky Central Railroad Company;" the one
13 approved March 15th, 1847, entitled "An act to incorporate the Licking and Lexington Railroad Company;" the one approved 27th February, 1849, entitled "An act to amend the Licking and Lexington Railroad Company," and the one approved March 3d, 1851, entitled "An act to amend the charter of the Covington and Lexington Railroad Company," and relying upon same, it says it is not subject by reason of the provisions thereof to taxation by the plaintiff, Bourbon County; that it is not amenable to the provisions of the said act of the General Assembly of the Commonwealth of Kentucky approved April 3d, 1878, and entitled "An act to prescribe the mode of ascertaining the value of the property of railroads for taxation and for taxing same," but is exempt therefrom.

Wherefore it prays for dismissal hence with its costs and proper relief.

STEVENSON, O'HARA AND BRYAN,
Att'ys for Ky. C. R. R. Co.

STATE OF KENTUCKY, *County of Bourbon:*

14 The affiant, James W. Bryan, says he is one of defendant's attorneys, a corporation, whose principal officers are absent from Bourbon county, and he believes the statements of the foregoing answer are true.

JAMES W. BRYAN.

Sworn to before me by Jas. W. Bryan, this October 20th, 1880.

The demurrer of plaintiff to answer of def't is as follows, to wit:

Pl'ff's Demurrer to Defendant's Answer.

"Plaintiff demurs to the answer of the defendant herein, because

the same does not state facts sufficient to constitute a defense, or to support a defense."

And afterwards, to wit, 29th April, 1882, the following order was entered herein, viz:

Pl'ff's Demur'r to Def't's Answer Sustained.

"This cause having been submitted to the court on the plaintiff's demurrer to defendant's answer, and the court being sufficiently advised, orders and adjudges that the said demurrer be sustained; to which ruling the defendant excepts."

Time Given Def't in Which to File Further Pleadings.

On motion of defendant, 30 days' time is given it in which to file any further pleadings herein.

15 And afterwards, to wit, October 16th, 1882, the following order was entered herein, viz:

Def't's Amended Answer Filed.

"The defendant's amended answer filed herein on the 26th day of May, 1882, is now noted of record."

The amended answer is as follows, viz:

Defendant's Amended Answer.

The defendant, The Kentucky Central Railroad Company, by leave of the court, amends its original answer herein, and says: It denies that it has or had at the dates stated any property within the county of Bourbon subject to taxation for county purposes, or that said board of equalization valued its property within said county properly or at its true value. It denies that it is subject or amenable to the said act of the General Assembly of the Commonwealth of Kentucky, approved April 3d, 1878, and entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same," and under which act this suit is sought to be maintained.

It says it was incorporated by an act of the General Assembly of
16 the Commonwealth of Kentucky, approved February 22d, 1871, entitled "An act to incorporate the Kentucky Central Railroad Company," which act was duly accepted and under which it was thereafter organized; that said act of incorporation, among other things, provided: "They (naming the incorporators) are hereby created a body politic and corporate under the name and style of the Kentucky Central Railroad Company, * * * and shall have and are hereby invested with all the powers, privileges, rights, immunities, and franchises, subject to the restrictions and limitations contained in the original charter of incorporation authorizing the construction of said railroad, and the various acts amendatory thereof, provided nothing in this shall be held to subject said powers, rights, immunities, and privileges purchased under judgment and order of sale of the Fayette circuit court, and hereby vested in the corporation by this act

created, to the operation of the act entitled 'An act reserving the right to amend or repeal charters or other laws,' approved February 14th, 1856, but the same are exempted therefrom." It
17 says it was by said act of the General Assembly last named made the successor of the Covington and Lexington railroad, which company was created by an act of the General Assembly of the Commonwealth of Kentucky, approved 27th February, 1847, entitled "An act to amend the charter of the Licking and Covington Railroad Company," approved March 1st, 1847, which last-named act was duly accepted, and that said Covington and Lexington Railroad Company was the successor of the Licking and Lexington Railroad Company, which organization was created by an act of the General Assembly of the Commonwealth of Kentucky, approved March 1st, 1847, entitled "An act to incorporate the Licking and Lexington Railroad Company." It says by an act of the General Assembly of the Commonwealth of Kentucky, approved March 3d, 1851, entitled "An act to amend the charter of the Covington and Lexington Railroad Company," which amendment was duly accepted and concurred in by the said Covington and Lexington Railroad Company, it was provided,
18 among other things, — a rate of taxation for said company. Susbequently the General Assembly passed an act, approved the — day of ——, 1864, which provided for the taxation of railroads at the rate of forty cents on each one hundred dollars in value of their property, valued at the rate of twenty thousand dollars a mile of the length of each road and its branches. The defendant, not waiving its right to resist the payment of tax otherwise than according to the terms of said act of 3rd March, 1851, have, since the passage of said act of 1864, paid tax according to its provisions, protesting, however, against the right and power of the General Assembly to alter or amend the said act of 3rd March, 1851, in respect to taxation.

It says by said acts of the General Assembly of the Commonwealth of Kentucky the rate of tax it should pay was fixed. It pleads all of said acts herein referred to as though fully set out, and relies upon same in bar of plaintiff's claim.

It says by reason of its said contract, as set out in said acts,
19 and acts amendatory of the General Assembly of the Commonwealth of Kentucky, each and all of which were duly and properly accepted by this defendant, except the said act of 1864, as above set forth, and its predecessors, respectively, with the Commonwealth of Kentucky, it is subject to a certain rate of taxation for the purposes of State revenue, but not subject to taxation at any other rate or for any other purpose or in any other mode whatever.

That the plaintiff, the County of Bourbon, has no legal right to assess it for taxes, as, by reason of the provisions of the various acts heretofore herein pleaded, it is exempt from the operation of the provision of the said act approved April 3rd, 1878, and set forth by plaintiff, and plaintiff has not the legal right to maintain this action against it.

Wherefore, having fully answered, it asks that plaintiff's petition be dismissed, and it have a judgment for its costs.

JNO. W. STEVENSON AND
O'HARA AND BRYAN,
Attorneys for Defendant.

And on the same day, to wit, Oct. 16th, 1882, the following
20 order was entered herein, viz:

Demurrer to Def't's Amended Answer Filed.

"Plaintiff filed a demurrer to defendant's amended answer."

The demurrer referred to above is as follows, viz:

Demurrer to Defendant's Amended Answer.

"The plaintiff demurs to the amended answer of the defendant herein because the same does not state facts sufficient to constitute a defense or to support a defense.

"KELLY BRENT,
"Att'y for Plff."

And on the same day the following order was entered, viz:

Judgment.

"This cause having been heard on a demurrer to the defendant's amended answer, and the court being sufficiently advised thereon, it is the opinion of the court that the amended answer is insufficient, and it is ordered that the demurrer to the said amended answer be sustained; to which ruling of the court, sustaining the demurrer, the defendant excepts.

"And the defendant pleading nothing further in the case it is adjudged that the plaintiff recover of the defendant the sum of two hundred and seventy-one $\frac{76}{100}$ dollars, with interest thereon at
21 the rate of 6% per annum from the 10th day of October, 1878, until paid, and for the further sum of thirteen $\frac{56}{100}$ dollars, being five per cent. damages. It is also adjudged that the plaintiff recover of the defendant the still further sum of four hundred and thirty-four $\frac{94}{100}$ dollars, with interest thereon at the rate of six per cent. per annum from October 10th, 1879, until paid, and the further sum of eight $\frac{56}{100}$ dollars, being five per cent. damages on $171.34; and also for the sum of eighteen $\frac{45}{100}$ dollars, being seven per cent. damages on railroad tax, $263.60, and the costs of the plaintiff herein expended."

From the above judgment the defendant prays an appeal to the superior court, which is granted.

And afterwards, to wit, October 20th, 1882, the following order was entered herein, viz:

Order Granting Appeal to Superior Court Set Aside.

On motion of the defendant the order herein entered on the 3d day of this term granting an appeal to the superior court is set aside.

22 *Appeal Granted to Court of Appeals.*

The defendant now excepts to the judgment entered herein on the 3d day of this term, and prays an appeal to the court of appeals, which is granted.

Schedule & Assignment of Errors Filed.

The defendant filed its schedule and assignment of errors herein.

The assignment of errors and schedule is as follows, viz:

Assignment of Errors.

The defendant, the Ky. Central Railroad Company, comes and assigns as errors committed by the court upon the trial of this cause the following:

1st. The court erred in overruling defendant's demurrer to the petition.

2nd. The court erred in sustaining plff's demurrer to the defendant's answer.

3rd. The court erred in sustaining the demurrer of plaintiff to def't's amended answer.

4th. The court erred in rendering judgment for plaintiff.

5th. The court erred in not rendering judgment for the defendant.

6th. The court erred in giving plaintiff a judgment for damages upon the amounts adjudged it as taxes.

7th. The court erred in giving the plaintiff a judgment for any amount.

23 8th. The court erred in not dismissing the plaintiff's petition.

J. W. STEVENSON,
O'HARA AND BRYAN,
Atty's for Defendant.

Schedule.

"The clerk of the Bourbon circuit court will make a complete copy of the record in this case for the court of appeals.

"O'HARA AND BRYAN,
"*Att'ys for Defendant.*"

And execution issued on the foregoing judgment as follows, viz:

Execution.

Commonwealth of Kentucky to the sheriff of Bourbon Co., Greeting:

We command you that of the estate of the Kentucky Central Rail-

road Company you cause to be made the sum of $291.26, with 6% int. per annum from October 10th, 1878, until paid; $13.56, without interest; also $434.94, with 6% int. per annum from October 10th, 1879, until paid, and $8.56, without interest; also $18.45, without interest, which Bourbon county, Kentucky, late in our Bourbon circuit court, recovered against it for debt; also $14.00, which to the
24 said county in said court was adjudged for her costs in that suit expended. Whereof said R. R. Co. is convict, as appears to us of record. And that you have the same before the judge of said court at the court-house in Paris, on the first Monday in December next, to satisfy and pay the said county her debt and costs aforesaid, and have then and there this writ.

Witness J. M. Jones, clerk of said court, at court-house aforesaid, this 26th day of October, 1882, in the 91 year of the Commonwealth.

J. M. JONES, *C. B. C. C.*

Judgment, October term, 1882.

And afterwards, to wit, Nov. 8th, 1882, a supersedeas bond was executed, which is as follows, viz:

Supersedeas Bond.

KENTUCKY CENTRAL R. R. Co., Appellant,
against
BOURBON COUNTY, Appellee.

Upon an appeal from a judgment of the Bourbon circuit court, rendered October 16th, 1882.

Whereas said appellant, The Ky. C. R. R. Co., has taken an
25 appeal from a judgment of the Bourbon circuit court, rendered at its October term, 1882, against it in favor of the appellee for the sum of $291.26, with 6% int. per annum from October 10th, 1878; $13.56, without interest; $434.94, with 6% interest per annum from October 10th, 1879; $8.56, without interest, and $18.45, without interest, damages and costs, and the appellant desires to sepersede the said judgment: Now, we, the *the* Ky. Central R. R. Company, principal, and C. Alexander, surety, hereby covenant to and with the appellee, Bourbon County, Kentucky, that the appellant will pay to appellee all costs and damages that may be adjudged against the appellant on the appeal, and also that they will satisfy and perform the said judgment in case it shall be affirmed, and any judgment or order which the court of appeals may render or order to be rendered by the *inferior* court, not exceeding in amount or value the judgment aforesaid, and also pay all rents, hire, or
26 damages which, during the pendency of the appeal, may accrue on any of the property of which the appellee is kept out of possession by reason of the appeal.

Witness *own* hands this 8th day of November, 1882.

C. ALEXANDER.

Att: P. M. MILLER, *D. C.*

And on the same day, viz., Nov. 8th, 1882, supersedeas issued as follows, to wit:

Supersedeas.

To the County of Bourbon and John B. Holloway, sheriff Bourbon county:

The Kentucky Central R, R. Co. having taken an appeal to this court from a judgment rendered by Bourbon circuit court on the 16th day of October, 1882, in the action of Bourbon County, pl'ff, and the Kentucky Central R. R. Co., defendant, you are therefore ordered to stay all proceedings on said judgment.

Given under my hand this 8th day of November, 1882.

J. M. JONES, *C. B. C. C.*,
By P. M. MILLER, *D. C.*

Endorsed:

Jailer's Return.

Executed on John B. Hollaway, sheriff of Bourbon county, by delivering a copy 10th Nov., 1882.

27 JOSEPH W. McCAMEY, *J. B. C.*

And aftewards, to wit, Nov. 10th, 1882, the sheriff of Bourbon county made return on the within-named execution as follows, to wit:

Sheriff's Return on Execution.

Levied Nov. 4th, '82, 11 o'c'lk a. m., on three freight cars, Nos. 315, 319, 374, property of defendant, and said property left in possession of John Stuart.

J. B. HOLLADY, *S. B. C.*

Stayed by supersedeas executed November 10th, 1882, a copy of which is herein enclosed; sheriff's ½ commission, $18.06.

J. B. HOLLADY, *S. B. C.*

Clerk's Certificate.

STATE OF KENTUCKY, }
Bourbon Circuit Court, } *sct:*

I. J. M. Jones, clerk of the circuit court for the State and county aforesaid, do certify that the foregoing 31 page-, of which this is one, contain a true, full, and complete transcript of the record in the case named in the caption, as the same appears of record and on file in my office.

Given under my hand as clerk of said court this 17th day of November, 1882.

J. M. JONES, *C. B. C. C.*

28 *Statement. [of] Parties.*

Court of Appeals of Kentucky.

THE KENTUCKY CENTRAL RAILROAD COMPANY, Appellant,
ag't
BOURBON COUNTY, Appellee.

This is an appeal from the judgment of the Bourbon circuit court, rendered at its October term, 1882 (on October 16th, 1882), and found on pages 22 & 23 of record. The appeal was granted by the court below and will be found on page 24, record, and no process from this court required.

J. W. STEVENSON,
O'HARA & BRYAN,
Att'ys for Appellant.

Both parties are solvent and good for costs.

O'HARA & BRYAN.

Order Noting Argument [of] Cause.

And afterwards, to wit, — the court of appeals continued and held for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 24th day of May, 1884, this cause came on to be heard and was argued by Alvin Durall for appellee, and Jno. W. Stevenson for appellant, and submitted.

29 And again at a court of appeals continued and held for the Commonwealth of Kentucky, at the capitol, city of Frankfort, on the 4th of January, 1885—

Mandate.

K. C. R. R. Co., Appellants, *versus* BOURBON COUNTY, Appellee.

Appeal from Bourbon Circuit Court.

The court being sufficiently advised it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment, and that appellee recover of appellant ten per cent. damages on the amount superseded herein, be affirmed, which is ordered to be certified to said court.

It is further considered that appellee recover of appellants costs herein.

Opinion of the Court of Appeals.

The question presented in this appeal is whether appellee, "The Kentucky Central Railroad Company," is subject to taxation for county purposes.

By an act approved March 1st, 1847, the "Licking and Lexington Railroad Company" was incorporated. By an act approved Feb. 27th, 1849, the name of the company was changed
30 to the "Covington and Lexington Railroad Company."

March 3rd, 1851, this charter was amended, and, among other provisions, is the following:

"That on the first day of January next, after the first declaration of dividends on the capital stock of said railroad company, and on the first day of January thereafter it shall be the duty of the president and directors of said company to pay into the treasury of this Commonwealth a tax on each one hundred dollars' worth of stock in said railroad company, equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more; and resident stockholders shall not list their stock in said company for revenue tax, nor be liable to payment of tax on the same in any other mode whatever."

February 22d, 1871, the "Kentucky Central Railroad Company" was incorporated for the purpose of operating the Covington and Lexington railroad, of which they are the owners by purchase under judgment and order of sale of the Fayette circuit court, and
31 shall have, and are hereby invested with, all the powers, privileges, rights, immunities, and franchises, subject to the restrictions and limitations contained in the original charter of incorporation authorizing the construction of said railroad and the various acts amendatory thereof: Provided, Nothing in this act shall be held to subject the said powers, rights, immunities, and privileges purchased under judgment and order of sale of the Fayette circuit court, and hereby vested in the corporation by this act created, to the operation of an act entitled "An act reserving the right to amend or repeal charters or other laws," approved 14th Feb., 1856.

On the 3rd of April, 1878, the Legislature provided a board of commissioners to ascertain the value of railroad property in the State subject to taxation for revenue, county, and municipal purposes, to ascertain the value of such property within county and municipal boundaries, and made it the duty of the commissioners to report their valuation to the auditor, who should report the same to the clerk of the county court.

32 The fourth section of the act provides that "the same value of taxation for State purposes which is or may be in any year levied on other real estate in this Commonwealth shall be, and is hereby, levied upon the value so found by said board of the railroad, rolling-stock, and real estate of such company, and at the same rate of taxation for the purposes of each county, city, town, or precinct in which any portion of any railroad is located, which is or may be in any year levied on any real estate therein, shall be and is hereby levied."

It is insisted for appellant that the act of 1878, fixing a different method of taxation, and possibly thereby increasing the tax limited in the charter of the company, violates the provisions of the Federal and State constitutions forbidding the passage of any laws impairing the obligation of the contract.

We refrain from considering how far the Legislature may contract away the sovereignty of the State in reference to the right
33 of taxation, since the question may be determined without it. Conceding such right, when not forbidden by the State constitution, the inquiry remains, Has it been exercised?

The statute under which the exemption is claimed reads: "Shall pay into the treasury of this Commonwealth a tax on each one hundred dollars' worth of stock in said railroad company, equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more."

The subject treated of is State revenue, and the taxes provided for are to be paid into the State treasury. There is no reference, express or by implication, to county or municipal taxation. The general law at the passage of this act provided for county and municipal taxation, and, in order to exclude the operation of such general law, the intention should have been [un]equivocally expressed. This is true in the interpretation of statutes in ordinary cases, and in the construction of statutes limiting the taxing power of the State the presumption that nothing more was intended than is in terms
34 expressed is much stronger. Taxation is an essential attribute of sovereignty, necessary to the life and the autonomy of the State, and can be *remembered* only in exceptional cases, and then only by express grant. Every intendment is against the intention to surrender such power. In Bailey *v.* Maguire, 22 Wall., 227, it is said: "It is never for the interest of the State to surrender the power of taxation, and an intention to do so will not be imputed to it unless the language employed leaves no other alternative."

This was a case where a railroad company was seeking exemption from county and municipal taxation under a provision in the charter exempting it from State taxation. The court held the company subject to county and municipal taxation.

The term "no more" used in the statute applies to the taxes provided to be paid into the State treasury, and is a limitation only upon the amount of tax that may be assessed for that purpose.

The act of 1878, providing a commission to equalize taxation of railroad, expressly authorizes the method of valuation adopted
35 in this case. That act has been declared constitutional by this court in the Railroad Tax Cases *v.* Commonwealth, Kentucky Law Reporter, Jan., 1884.

Judgment affirmed.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Ky., at the capitol in the city of Frankfort, on the — day of ——, 1885, ordered, that the time for filing petition for rehearing herein be extended to April 1st.

And afterwards, to wit, on the 19th of March, 1885, at a court of appeals continued and held for the Commonwealth of Ky., at the capitol in the city of Frankfort, on the 19th day of March, 1885, ordered that the time for filing a petition for rehearing be extended to May 1st.

And afterwards, to wit, at a court of appeals continued and held for the Commonwealth of Kentucky, at the capitol in the city
36 of Frankfort, on the 2d of May, 1885, came appellant, by counsel, and filed a petition, & moved the court for a rehearing of this cause, which motion is submitted.

The petition for a rehearing of this cause is in the words & figures following, to wit:

Petition for a Rehearing.

Court of Appeals of Kentucky. September Term, 1885.

KENTUCKY CENTRAL RAILROAD COMPANY, Appellant,
against
BOURBON COUNTY, Appellee.

This court, I am sure, does not doubt the profound respect and unaffected confidence entertained by the counsel of appellant personally and officially for every member composing it.

The pecuniary amount of the judgment sought to be reviewed is, I concede, comparatively inconsiderable, but the questions determined by it are of the greatest magnitude and importance.

37 Persuaded that the opinion of the court is erroneous, resting, as I sincerely believe, on mistaken assumptions of law and fact, and calculated to work mischief, wrong, and injustice very far beyond the controversy here decided, my professional duty to those I represent constrains me to ask the court to grant a rehearing and to order a reargument.

This cause was orally argued and submitted in May, 1883. Since that period a partial reorganization of this court has taken place.

A member of the court at that time, the chief justice has voluntarily retired, and his worthy successor, who did not hear the oral argument, is called upon now to take part in its final settlement.

The determination of the questions in this record concerns not merely the taxation of ap-ellant's property within this Commonwealth, but it involves the vital right of all corporations everywhere, other than those purely municipal, within the United States.

38 The County of Bourbon instituted its action in the Bourbon circuit court against the Kentucky Central Railroad Company to recover an amount alleged to be due for local taxes by said railroad company to said county.

The railroad company appeared, answered, and denied that it was liable for local and municipal taxation, but was expressly exempt therefrom by its charter and the amendments thereto.

The suit was brought under and by the authority of an act of the Kentucky Legislature approved 3d of April, 1878. It authorized the Legislature to provide a board of commissioners to ascertain the value of railroad property in the State subject to taxation for revenue, county, and municipal purposes; to ascertain the value of such property within county and municipal boundaries, and made it the duty of the commissioners to report the valuation to the auditor, who should report the same to the clerk of the county court.

The fourth section of the act provides:

39 The same rate of taxation for State purposes which is or may be in any year levied on other real estate in this Commonwealth shall be, and is hereby, levied upon the value so found by said board of the railroad rolling-stock and real estate of

each company; and the same rate of taxation for the purposes of each county, city, town, or precinct in which any portion of any railroad is located, which is or may be in any year levied on other real estate therein, shall be, and is hereby, levied on the value of the real estate of said company therein.

The Kentucky Central Railroad Company was incorporated by an act of the Kentucky Legislature approved 22d February, 1871. The corporation accepted its provisions, and was organized on the 14th of June, 1875, to operate and maintain the railroad between Covington and Lexington. It was the successor of the Licking and Lexington Railroad Company, incorporated by an act of the Kentucky Legislature approved 1st of March, 1847, and the original title of which was by an act approved 27th of February, 1849,
40 changed to that of the Covington and Lexington Railroad Company.

The Kentucky Central Railroad Company was expressly invested with all the powers, privileges, rights, and immunities contained in the original act of incorporation, and was expressly exempt from the operation of the act reserving the right to amend, alter, or repeal charters and other laws, approved 14th February, 1856.

The Bourbon circuit court rendered a judgment against the Kentucky Central Railroad Company for the taxes sued for. From that judgment an appeal was prayed by the Kentucky Central Railroad Company to this court, where the judgment was affirmed.

Upon the 24th January, 1885, the chief justice delivered the following opinion:

(See page 33 of Record.)

Counsel for the appellant maintain—

First. That the charter of the Kentucky Central Railroad Company, and the various acts amendatory thereof, created a
41 contract between the Commonwealth of Kentucky and the corporators, prescribing the total amount of assessment and taxation to which they were ever to become liable, as well as the mode and manner in which the said assessment was to be made, and that the inviolability of said contract was protected alike by the Federal and State constitutions.

2nd. That the assessments and taxes levied by Bourbon county for county and municipal purposes were illegally levied by a board of three persons appointed by the Governor, known as railroad commissioners, who proceeded to value appellant's railroad property for taxation without deducting from the same the unpaid *bona fide* mortgages at that time existing thereon, subjecting the appellant thereby to an unequal, unjust proportional burden, and denying to said corporation the equal protection of the laws guaranteed by the constitution of Kentucky as well as by the Fourteenth Amendment of the Constitution of the United States.

3rd. That the valuations, assessments, and taxation sought
42 to be enforced were made by said railroad commissioners without any notice whatever to appellant, or without any

knowledge on his part, and without permitting him to be present or to be heard in person or by attorney, respecting the value of his property, thus secretly valued and taxed for State and local purposes in manner not authorized by their charter, or for the correction of any errors of said board, thus depriving the appellant of his property without due process of law, guaranteed by the Constitution of the United States. The clause of appellants' charter under which the exemption from taxation is claimed, is found in the 4th section of the amendment, approved the 3d of March, 1851.

It provides:

(See page 34 of Record.)

Kentucky Session Laws, 1850–'1, pag- 268.

We do not understand the opinion of this court to controvert appellant's position that this statutory provision did constitute a valid contract between the Commonwealth and the corporators, creating a limitation upon the right of the Commonwealth to tax the
43 property of the appellant to the amount of tax prescribed therein. But the court holds that the restriction in the amendment refers solely to taxation for State revenue, and does not apply, and was not intended to apply, to county or municipal taxation. This involves the judicial construction of the amendment containing the exemption. We respectfully submit that the construction announced in the opinion is erroneous on several grounds, as we shall endeavor to show.

The opinion says:

See page- 37 & 38 of Record.

Before proceeding to state our objections to the foregoing construction of this provision of the charter we desire respectfully to ask if the court is not unintentionally mistaken in one or two assumptions of fact upon which said construction in part rests? We are not aware that a general law existed on the 3d of March, 1851, providing for county and municipal taxation of railroad property.

We have looked in vain for such an act, and plead total
44 ignorance of any such legislation. Upon the contrary, we submit that this court has expressly held that the property of the Kentucky Central railroad is not subject to local taxation by the separate counties through which it runs.

Applegate *vs.* Ernst, 3 Bush, 651.

In that case Pendleton county in 1868, like Bourbon county now, having subscribed stock to the Covington and Lexington railroad, imposed an ad valorem tax on all the taxable property in that said county for the purpose of raising the amount necessary to pay its subscription, claiming that so much of the railroad as lies in that county was subject to the local levy thus imposed. The county court was attempting to enforce payment by sale, when the owners of the Kentucky Central railroad obtained an injunction against any further proceeding.

The circuit court perpetuated the injunction, from which Pendleton county appealed to this court, when the judgment of the chancellor was affirmed.

Judge Robertson, in delivering the opinion, said:

45 The railroad from one end to the other is an entirety, and as a whole only may be subject to taxation or coercive sale. Fragmentary taxations or sales might be unjustly vexatious and injurious to the owners, pervert the destination of the road, and disturb the public use and interest.

To avoid such evils and absurdities the law treats a railroad and all its appurtenances as one entire thing, not legally subject to coercive severance or dislocation. In that consolidated form it must be for State revenue and cannot be a fit subject for local taxation by the separate counties through which it runs.

The unanimous ruling of this court, that the taxation of said railroad for county purposes is beyond the range of legitimate taxation, has been acquiesced in and acted upon until the act of April 3d, 1878, was passed.

If, therefore, there was no general law at the passage of the amendment authorizing county and municipal taxation of railroads, no presumption can arise that the exemption does not include taxes for county and municipal purposes, as well as for State revenue.

46 The opinion, in support of its conclusion that the exemption contained in the amendment did not apply to taxation for county or municipal purposes, says:

"The subject-matter treated of is State revenue, and the taxes provided for are to be paid into the State treasury. There is no reference, express or by implication, to county or municipal taxation."

Here we are again constrained to differ with the court as to a matter of fact. By our construction of this amendment it does by implication, as we conceive, refer to county and municipal taxation.

The first clause of the amendment prescribing and limiting a tax on each one hundred dollars' worth of stock in said railroad equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more, while the 2d provides:

"And resident stockholders shall not list their stock in said company for revenue tax, nor be liable to payment of tax on the same in any other mode whatever."

47 Here is an express exemption from all further tax for State revenue, save that prescribed in the enactment; but the concluding clause of the amendment, not quoted in the opinion, expressly provides that appellant shall not be liable to payment of tax in any other mode whatever.

This second exemption from every other species of tax, we confidently submit, did refer to and did include county and municipal taxation.

It either means that or the latter clause of the amendment becomes wholly inoperative and ineffectual. The rule in the construction of statutes is that every word of a statute must have its effect *a fortiori* — every provision thereof.

The opinion of the court holds that the fourth section of the

amendment, while creating a valid contract between the State and the corporators, exempting the property of the latter from any tax save that set forth in the section, insists that the exemption applies to taxes for State revenue, and does not apply, and was not intended to apply, to county or municipal taxation. We respectfully
48 suggest that this construction is manifestly erroneous on grounds which we will briefly suggest.

The construction of the 4th section of the amendment approved March 3d, 1851, rests, as we submit, on erroneous assumptions of both law and fact.

The opinion states that at the passage of this amendment *that* there was a general law in force in Kentucky subjecting the property of railroad corporations to county and municipal taxation. Therefore to exclude the property, franchises, and rights of the appellant from the operation of that general statute the exemption claimed should have expressly specified county and municipal taxation, in addition to taxation for State revenue, as within its scope and operation. An intention to include county and municipal taxation within the contract of exemption must be unequivocally expressed in the enactment containing such exemption. No presumption can be, therefore, indulged in, says the opinion, that the Legislature intended to extend the exemption to county and municipal taxation.

The court is certainly but unintentionally mistaken in its
49 assumption that there was, upon March 3rd, 1851, a general law providing for county and municipal taxation. If the postulate on which the reasoning rests is, in point of fact, untrue, it would seem to follow that the conclusions deduced from it are erroneous. But concede the existence of such a general law providing for county and municipal taxation, as claimed, the 23rd section of the original charter of the Licking and Covington railroad expressly excluded these corporators from its operation.

Again, we submit that the opinion is equally erroneous in its assumption that the section containing the exemption contains no reference, express or by implication, to county or municipal taxation.

The section clearly contains two distinct species of taxation, as the court, we think, will, on a close examination, concede. The first clause of the section provides that on the first day of January, after the first declaration of dividends upon the capital stock of the company, and on each first day of January thereafter, there shall be paid into the treasury of the Commonwealth by the company
50 a tax on each one hundred dollars worth of stock in said railroad company equivalent to the rate of tax on each one hundred dollars' worth of property for state revenue, and no more.

Here is one distinct, clear, substantive species of tax for State revenue. Is there any other species of taxation referred to in the section from which the State has agreed to exempt the corporators besides that for State revenue? The opinion says not. But the court is clearly mistaken. The chief justice seems inadvertently to have over-

looked the second clause of the section, which is not referred to in the opinion. That provides:

"And resident stockholders shall not list their stock in said company for revenue tax, nor be liable for payment of tax on the same in any other mode whatever."

If language means anything, the section must be construed as providing, 1st, for an exemption from all taxation for State revenue, save that prescribed in the section; 2d, from all liability to pay tax in any other mode whatever.

What do these latter words reasonably mean but that the
51 Legislature, after prescribing the tax to be levied on the stock for State revenue, entered into a contract with the corporators that their stock was to be forever exempt from all further taxation in any other mode whatever?

Any other mode, or all further modes, of taxation we confidently submit must include county and municipal taxation. If the opinion be right that the exemption was intended to apply only to taxation for State revenue, why did the section not stop at the words "no more?" That would have clearly and fully effectuated the legislative intent, if its object had been, as the opinion insists, to limit the exemption simply to taxation for revenue. What need of the second clause of the section? *Cui bono?*

The word "taxation" in the first clause is expressly declared to to be a "tax for State revenue;" the exemption in the second clause "from taxation in any other mode whatever" would reasonably include every other species of tax.

No construction can be sound which does not harmonize
52 all the provisions of the original charter and the amendments thereto. Statutes in "*pari materia*" must be construed together, and the legislative intent ascertained and perpetuated.

That intent was manifested in inviting capitalists to build a railroad from Covington and Cincinnati to Lexington through the most fertile blue-grass lands of the Commonwealth. What better plan than for the Legislature to say to them, Invest your money in this enterprise, and the Commonwealth will solemnly contract with the the corporators and its associates that their corporate rights, franchises, and property shall never be taxed until the railroad is finished, used, and completed. Nay more, that the Commonwealth solemnly covenants with the corporators that their franchises and property shall be exempt from all taxation until they are enabled, from the earnings of the railroad, to declare a dividend on the capital stock of said company, and after the occurrence of that event

the property, franchises, and privileges of said company shall
53 then become subject to a tax for State revenue on each one hundred dollars' worth of stock in said railroad company, equivalent to the rate of tax on each one hundred dollars for State revenue, and no more; and the State further covenants that resident stockholders (none other were liable to tax in Commonwealth) "shall not list their stock in said company for revenue tax, or be liable to payment of tax on the same in any mode whatever."

But the Legislature, to disarm timid capitalists from all possible

alarm, further said: "Lest an attempt might be made to disregard in troublous times of panic, prejudice, or disaster the solemn faith thus pledged, the Commonwealth further declares that the Legislature shall have no power to repeal, alter, or amend your charter or any amendment thereto, as provided in an act approved February 14th, 1856. The capital was subscribed, the road was built, it never declared a dividend or paid a tax, but was sold under the judg-
54 ment of a court of competent jurisdiction, and that sale confirmed.

The purchasers formed a joint stock company for running and managing said road.

Two years after, in the year 1862, they declared a dividend and paid a tax to the State in every January succeeding for State revenue, in accordance with the provision of the 4th section of the act approved March 3d, 1851. These taxes were received by the Commonwealth for years without murmur.

It had been judicially decided by the Franklin circuit court in 1866 that the said 4th section of the amendment approved 3d March, 1851, constituted a contract between the Commonwealth of Kentucky and the Covington and Lexington railroad as to taxation in manner and form as therein expressed; that the purchasers of said railroad, its property, rights, and franchises are entitled to the exemption from tax in the same manner and to the same extent as said Covington and Lexington Railroad Company would have been entitled under said exemption.

The Commonwealth and the owners and purchasers of
55 the Covington and Lexington Railroad Company and the Kentucky Central Railroad Company acquiesced in that construction of said 4th section of the act approved March 3d, 1851, for years.

The act — April 3d, 1878, seeks to disregard these solemn covenants thus entered into between the State and the appellant. The doctrine of the sacredness of vested rights has its root deep in the common law, whence so much of our own has been transplanted.

The Constitution of the United States wisely protects these legislative contracts of exemptions from invasion and spoliation. If the construction of the 4th section of the act approved March 3d, 1851, expressed in the opinion prevail, then the rights, privileges, and property of the appellant are at the mere arbitrary disposal and control of the legislative will

Such a construction would seem to be in direct violation of the provision of the original charter, and the amendment of March 3d, 1861, thereto, which exempt the corporation from all taxa-
56 tion until the completion of the road, and the declaration of a dividend from the earnings of the company.

Why exempt the taxation for State revenue until the road was completed and a dividend declared, if counties and cities were unlimited in their right to tax the embryo corporation?

But the construction maintained in the opinion is not sound, because it allows the exemption which declares that the taxation shall

be made on the ad valorem value of the stock to be made on the value of the property, rolling-stock, etc., of the company.

If it be conceded that the charter and amendments thereto constitute a contract on the part of the Commonwealth with the corporators, and that the charter provides that all taxation shall be assessed in a particular mode and in no other, upon the property of the corporation, why is it, then, any subsequent legislative attempt to change the prescribed mode for levying the tax does not constitute a violation of the obligation of a contract?

When a statute limits a thing to be done in a particular mode or in a prescribed manner it includes a negative of any other mode.

57 It is laid down in Slade *v.* Drake (Lord Hobart's Reports, 298), that affirmatives in statutes that introduce a new rule imply a negative of all else. Plowden, in Shading *vs.* Morgan, 206, also declares "that when a statute limits a thing to be done in a particular mode it includes a negative of any other mode." This doctrine has been cited and approved by the Supreme Court of the United States in a railroad case, where the exemption from taxation was limited to a term of years, and until the dividend reached a certain sum, and where it was claimed by the State that a statute exempting all the property of a railroad corporation from taxation did not exempt the rolling-stock and real estate owned by it and required by the company for a successful prosecution of its business.

Judge Davis says:

"The only way in which property of this company could be reached for taxation at all was after the limitation of the fifteen years had expired. The Legislature was then at liberty to tax the individual shares of the stockholders whenever their annual profits exceeded 8 per cent.

58 "When a statute limits a thing to be done in a particular mode it includes a negative of any other mode."

Raleigh and Gaston Railroad Company *v.* Reed, etc., 18 Wall., 269.

By the terms of its charter the Kentucky Central Railroad Company became invested with all the rights, powers, franchises, and privileges of the original act of incorporation and the amendments thereto. By these it was provided expressly that all taxation of the rights, franchises, and property of the Kentucky Central Railroad Company were to be assessed and taxed upon the one hundred dollars ad valorem worth of the shares of stock in said company, equivalent to the rate of tax upon each one hundred dollars' worth of property for State revenue, and resident stockholders were expressly exempt from listing their stock for State revenue, or from becoming liable to the payment of tax upon the same in any other mode whatever.

From 1847, the date of the original act of incorporation, until April 3d, 1878, a period of thirty years, no other mode of tax

59 upon the rights and property of the railroad had ever been provided or sought to be enforced. The contract of exemp-

tion included the prescribed mode in which the assessment was to be made, as well as the limitation of the tax itself.

Both entered into the obligation of the contract. Both were alike protected by State and Federal constitutions. If the court was right that the exemption from tax in the 4th section was not intended to apply to county and municipal taxation, still the mode and manner of assessing the tax would remain unchanged. All taxes upon the company would have to be levied on the ad valorem value of the shares of stock, and not upon the land and property of the railroad company.

Again the exemption of tax contained in 4th section of the amendment approved March 3d, 1851, even if it be held as applicable to taxes for State revenue alone, would not authorize any interference with the contract for the prescribed exemption for State revenue; that taxation could not be increased without a direct violation of the provisions of the 4th section.

60 In addition, appellant's charter exempted it expressly from all legislative power of amendment, alteration, and repeal, as provided for by the act of the Legislature, approved 14th February, 1856.

How can it be argued, then, that the act of 3d of April, 1878, which abrogates totally the mode of taxation prescribed in the original charter and in the amendment approved the 3d March, 1851, but which likewise increases the amount of the tax for State revenue, as well as for county and municipal taxes, tenfold, does not violate the obligation of the contract for exemption? If every statement in the opinion were conceded and if every mistaken assumption of fact therein were admitted to be true, still the Legislature could have no constitutional power to authorize any change in the mode of assessment prescribed in the contract. The constitutional prohibition applies both to the mode as well as to the limitation upon the amount.

How does the court reach its conclusion that the act of 1878, fixing a different method of taxation, increasing the amount
61 . of the tax specified in the charter, and adding new subjects for taxation, such as rolling-stock, etc., declared by this court in two separate opinions not to be subject to county taxation, does not violate the vested rights of appellant?

A compact (says the Supreme Court of the United States) lies at the foundation of natural life. Contracts mark the progress of communities in civilization and prosperity. They guard as far as possible against the fluctuations of human affairs. They seek to give stability to the present and certainty to the future. They gauge the confidence of man in the truthfulness and integrity of his fellow-man.

They are the springs of business, trade, and commerce. Without them society could not go on. Spotless faith in their fulfillment honors alike communities and individuals. Where this is wanting in the body-politic the process of descent has begun, and a lower plane will be speedily reached. To the extent to which the defect

exists among individuals there is decay and degeneracy. As are the integral parts so is the aggregate mass.

62 Under a monarchy or an aristocracy order may be upheld and rights enforced by the strong arm of power. But a republican government can have no foundation other than the virtue of its citizens. When that is largely impaired all is in peril.

It is needless to lift the veil and contemplate the future of such a people.

Trust *vs.* Child, 21 Wall., 441.

Farrington *v.* Tennessee, 95 U. S. Rep., 682.

Hence the Constitution of the United States wisely protects this interest, public and private, from invasion by State laws.

We concede that when an exemption is claimed it must be shown to exist. Every presumption is against it. But where an exemption is shown to exist it must be enforced.

Upon the examination of the original act of incorporation and the amendment thereto several things clearly appear therein:

1st. The railroad company was expressly and specially exempt by the State from all taxation until its completion and until a dividend was earned and declared upon its capital stock.

63 2nd. The tax assessed was upon the shares of stock. It was limited and specified in mode and amount.

3rd. An exemption of resident stockholders from all further tax for State revenue tax, or from taxation in any other mode whatever. Such was the contract between the State and corporators.

Examined in the light of reason, can this act of 3d of April, 1878, repealing as it does all these exemptions, be deemed a valid exercise of legislative power?

When this charter and its subsequent amendments were granted the Commonwealth had the power to have been silent as to all taxation. In such case its power would have been unfettered.

The Providence *v.* Billing, 4 Peters, 514.

It had the power to make its own terms or to refuse the charter.

It chose from the beginning to stipulate for a specified tax for State revenue only upon the occurrence of certain conditions. It declared by contract, too, that such specified tax was forever to be assessed upon the shares, and in no other mode, and that said

64 resident corporators were never to become subject to tax upon their shares in any mode whatever.

The opinion tells us that the act of 1878 providing a commission to equalize taxation of railroads expressly authorizes the method of valuation adopted in this case, and that act has been declared constitutional by the court in the Railroad Tax Cases *v.* Commonwealth, 5 Ken. Law Reporter, Jan., 1884.

But counsel respectfully suggests to the court that none of the railroad charters passed on in that case contained the stipulations for exemptions from taxation, and especially from express legislative inhibition to modify, alter, or amend the provisions of railroad charters as are contained in this. This important difference in the en-

actments construed by the court in that case would unquestionably prevent its ruling from becoming binding authority in this.

Counsel could offer the court no more persuasive reason for granting a rehearing in this case than by a statement that the railroad charters passed on by the court were subject under the act of
65 1856 to legislative revision, amendment, and control, while the Kentucky Central Railroad Company was expressly exempted from its operation.

I omit any reference to my objections to the validity of the act of 1878, on the grounds of its antagonism to the Fourteenth Amendment of the Constitution of the United States, declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, creates a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation.

Nor will I discuss the unconstitutionality of the act as in conflict with the great principle which lies at the foundation of all just government that no one shall be deprived of his life, liberty, or his property without an opportunity of being heard against the proceeding of the board, nor of the same act for its utter want of uniformity and equality in the burden of taxation as required by the constitution of Kentucky.

66 These points no doubt have been considered by the court in the case to which the opinion refers. I therefore forbear.

Thanking the court for their courtesy and great kindness in extending to me the time for filing a rehearing, I ask that the case may be reheard.

JOHN W. STEVENSON,
Of Counsel for the Kentucky Central Railroad Company.

KY. CENTRAL RAILROAD CO. *v.* BOURBON COUNTY.

This suit was brought to recover two years' taxes alleged to be due and owing by the railroad company to Bourbon county under an act of the Legislature approved April 3d, 1878, entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation and for taxing same." 1 vol. Sess. Acts 1878, pa. 82.

The defendant's demurrer to the petition was overruled. It answered, denying the alleged indebtedness and averring that it was incorporated by an act approved Feb'y 22nd, 1879, some of
67 the provisions of which it quotes, and by which it was invested with "all the powers, privileges, rights, immunities, and franchises of the Covington and Lex. railroad;" that the last-named company was the successor of the "Licking & Lexington Railroad Company," incorporated by an act approved 15th March, 1847, "and under which said company was organized;" that the latter company was changed to the Cov. & Lex. Railroad Co. by an act approved Feb. 27, 1849; that said amendment was accepted by the company, who organized and proceeded to act, and did act, under said charter as amended;" that said charter was

further amended by an act approved March 3d, 1851, which provided, amongst other things:

"SEC. 4. That on the first day of January next, after the first declaration of dividends on the capital stock of said railroad company, and on every first day of January thereafter, it shall be the duty of the president and directors of said company to pay into the treasury of this Commonwealth a tax on each one hundred dollars' worth of stock on said railroad Co. equivalent to the rate of tax on each one hundred dollars' worth of property for State
68 revenue, and no more."

That by virtue of said act the rate of tax the company shall pay "is fixed, and that said tax shall be for State revenue, and that it shall not be liable for any further or other tax."

Wherefore, pleading and relying on said act, it says "it is not subject, by reason of the provisions thereof, to taxation by the plaintiff, Bourbon County," and is not amenable to the provisions of the act of April, 1878.

The plaintiff's demurrer to this answer was sustained, and the defendant amended, setting out substantially the same matter of defense. The only new matter alleged is the passage of an act in 1864 providing for the taxation of railroads at the rate of 40 cents on each $100 in value of their property valued at the rate of $20,000 a mile; and that defendant has, since the passage of that act, paid tax according to its provisions, protesting, however, against the right of the Legislature to alter or amend the act of 3d March, 1851, in respect to taxation.

The provisions and effect of the act of 1864 will be hereafter noticed.

69 A demurrer to the amended answer was sustained and judgment rendered for the *same* claimed and for damages.

It is thus seen that the sole defense relied upon by the appellant in its pleadings is that the 4th section of the amendment to the charter of the Covington and Lexington Railroad Company approved 3rd of March, 1851, constituted a contract limiting the rate of taxation, beyond which the company could never be assessed for either State or county revenue, and thereby protesting and excluding the appellant from the provisions of the act of April 3, 1878.

If this proposition is maintainable the demurrer to the answer ought to have been overruled; if not, the demurrer was properly sustained.

Nobody doubts at this day the power of the Legislature to create corporations in which rights and privileges are granted that no subsequent legislation cannot destroy or repair. Many cases in which such legislative contracts have been upheld are cited by counsel for the appellant, the authority of which I do not dispute, and
70 which need not therefore be specially noticed.

The question here is, Does the amended statute of 1851 constitute such a contract?

I submit that it does not, and will attempt to show, by reference to one or two cases only, that the act of April, 1878, embraces the

corporation now appealing, and is not open to any of the constitutional objections by which it has been assailed.

The case of Louisville, Cin. & Lex. Railroad Co. *vs.* Coruth, 10 Bush., 43, seems conclus[iv]e of every question that has been made in the present case. The Louisville & Frankfort Railroad Co. was incorporated in March, 1847. It was required to pay into the State treasury a tax of 25 cents on each share of $50 of stock owned by stockholders. By an act of Feb'y, 1848, the rate of tax on each $100 of stock was fixed at so much "as is collectable on each $100 of taxable property for the public revenue."

The Frankfort & Lexington Railroad Co. was incorporated in Feb'y, 1848, with a similar provision as to taxation. The charter-
of the two companies were so amended in Feb'y, 1866, as to
71 authorize them to *contract* a branch railroad from near La Grange to a point near Newport or Covington. This amendment provided that in the construction of such road "said railroad shall have all the rights, powers, & privileges conferred by the charter of the Louisville & Frankfort Railroad Co. and the various amendments thereto," and that the two companies might increase their stock. The branch known as the short-line road was completed, and in Feb., 1870, an act was passed consolidating the two companies into one—the Lou., Cin. & Lex. R. R. Co.—and it was invested with and succeeded to "all the rights, privileges, and powers of the preceding companies out of which it had been created." The shares of the new company were fixed at $50.

Then came the act of Feb'y 20th, 1846 (Sess. Acts 1863–'64, pa. 101), declaring "that all railroads in this Commonwealth (other than street railroads), including depot grounds and other improvements, etc., are valued at $20,000 per mile, and are taxed upon that valuation at the same rate of tax as is levied by law on real estate." By
the 8th section "all conflicting or incompatible laws are re-
72 pealed, and no other taxes than those imposed, whether provided for in the charter or otherwise, shall be collected from the several corporations," etc.

The Commonwealth sued the company for the taxes alleged to be due on the short-line road, under the provisions of the act of 1864.

The company defended upon the ground that, as that road belonged to the two original companies and was constructed under their charter, the payment of taxes on the shares of their stock is in full discharge of all revenue in the State.

This court held the defence untenable. It recognizes the power of the legislation to create corporations, giving them rights which cannot be impaired without their consent, but holds that "there is no contract, however, in this case effecting the right of taxation. * * * Nor has the Legislature, in imposing this tax (in the two original charters), undertaken to say or contracted that no additional tax shall be imposed, but, on the contrary, by amendments to the original charter, has not only changed the mode of its collection, but increases the rate of taxation."

Quoting the language used by this court in Bradley *v.* Mc-
73 Atee, 7 Bush., 667, "that the taxing power of the State is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms," and by Ch. J. Marshall, in 4 Peters, 514, that "we must look for the exemption in the language of the instrument, and if we do not find it there it would be going very far to insert it by construction," this court says: "The mere imposition of taxes at the time a charter is granted, or afterwards, upon the property of a corporation will not authorize the court to assume that the Legislature has contracted that no additional [tax] shall be imposed, either upon the property owned by the corporation at the time of the grant or afterwards acquired."

The court next decides that the road should be taxed, not upon the stock of the corporation, as provided by the original charters, but upon the value of $20,000 per mile, as provided by the act of 1864, which in terms repeals all laws inconsistent with its provisions, and declares that no other taxes shall be collectable, whether provided for in the charter or otherwise.

74 The conclusion of the court is: "All these roads are now consolidated into one corporation, and the valuation of the whole road, in the mode prescribed by the act of 1864, will determine the amount of the taxes due, the stock not being (as the law now exists) the subject of "taxation."

Certainly nothing need be here said to show the striking and complete analogy between the case cited and the case at bar. Nor will I stop to prove either by argument or authority that the words "no more," as used in the amended charter of appellant, passed in April, 1851, or the exemption of stockholders individully from the payment of tax on their stocks, have no sort of influence or bearing upon the question whether or not that amended charter constituted a contract which bound the State for all time to come.

The act of April 3d, 1878, in conformity with which the judgment appealed from was rendered, has been fiercely assailed by the able and distinguished counsel for the appellant as being unequal and oppressive in its operation; as having created a star-
75 chamber tribunal, in — no notice or appeal is provided for, which unjustly discriminates against railroad property and franchises, and which is agrarian in its design and spirit, and is therefore unconstitutional.

I shall not waste the time of the court, or my own, in an elaborate notice of these assaults, feeling satisfied that a glance at the provisions of the act will be sufficient to repel them.

Since the introduction of railroads, efforts have been made from time to time to adjust by legislation the matter of their taxation upon some equal and just basis. At first, as we have seen, the value of their stock was subjected to taxation. Experience soon proved that this system was grossly unjust to the great body of tax-payers, and *hence* the act of 1864, by which the Legislature itself assessed the value of all railroads at $20,000 per mile, irrespective of their actual value. This statute was re-enacted by the Gen.

Statutes (pa. 744). By an act approved March 17, 1876 (Gen. Stat., pa. 894), a tax for county purposes was imposed on railroad and other corporations.

76 To remedy the supposed inequalities and imperfections in the legislation mentioned, and in, perhaps, other statutes on the subject, was the evident purpose of the act of April, 1878. That it did afford such remedy would seem indisputable.

By the 1st section of the act the president of each railroad is required, in the month of July, to return to the auditor, under oath, the total length of the road within the State & in each county, city, & town, with the average value per mile, including engines, improvements, other real estate, &c., and their value.

Sec. 3 requires the Governor to appoint three citizens of the State, disinterested freeholders, as a board of equalization, who shall meet annually on the 1st of September. The auditor shall lay before them the returns made as above, and the board may equalize the valuations by increasing or decreasing them. They are to take an oath, and may sit not over 20 days, making a record of their proceedings.

By sec. 4 the same rate of taxation for State purposes which is levied on other real estate is to be levied on the value, so
77 found, of the railroad, rolling-stock, and real estate of the company, and the same rate of taxation for the purposes of each county, city, &c., in which any part of the road is located, which may be levied on other real estate therein, shall be levied on the value of the company's real estate. And immediately af- the board complete- their work the auditor is to notify the clerk of each county court of the amount to — assessed for taxation in his county, and also each railroad company of the amount of it- assessment for state and county purposes. All existing laws for the assessment and taxation of railroad property by counties, cities, or towns are repealed. The taxes levied under the act are recoverable by — against the company that fails to pay by the 1st of October of each year.

If the objections urged against the validity of this law are to prevail it is not easy to see how the act of 1864 escaped the condemnation of this court in the case just cited, in which that act was sustained and approved. Nay, more, it must follow that our present system of revenue & taxation is embodied in the General
78 Statutes, and in the statutes there enacted is, for the same reason, for the most part, a failure.

The citizen is required to furnish the assessor with a list of his property and its value under oath. The assessor then proceeds, without notice to the tax-payer, to ascertain and fix the value upon such evidence as is within his reach. He returns this assessment to the clerk of the county court.

Then comes the "board of supervisors appointed by the county court, who, without notice to the tax-payers, proceed to examine witnesses and to correct errors as to valuation or otherwise, and, upon their own judgment upon the testimony, to fix the proper value. There is no appeal from this decision provided for. The tax-payer gets no notice of the action of this board, except the demand which

the sheriff makes upon him for payment of his taxes, the amount of which has been ascertained by this *ex parte* quasi-judicial proceeding. (Gen'l Stat., chap. 92, act 5 & 6, pp. 720 to 724). And if he fails to pay on demand the sheriff may at once proceed to distrain his goods and chattels.

79 Now I submit that there is a good deal more of the star-chamber inequity in all this than there is in the plan of assessment and collection embodied in the law of 1878. But there is no such inequity in either.

But counsel for appellant find a fatal objection to this act in its failure to allow the appellant any deduction from the assessed value, on account of a mortgage debt of over $6,000,000, for the payment of which the property of the company is in lien, which he says is a denial of the equality in taxation guaranteed by the Constitution.

By way of illustrating the inequality between the taxation to which the citizen is subject and the taxation imposed by this act he says, "Suppose a private person owns a farm which is valued at $100,000, and it is encumbered with a mortgage of $80,000, it is, in that case, assessed at $20,000." (Printed brief, pa. 45.)

The total and extraordinary misconception of the law regulating individual taxation which this quotation exhibits accounts for many of the propositions insisted upon with equal confidence by

80 [my] learned friend in his oral and printed argument.

It is insisted that the act in question discriminates unjustly against railroads by subjecting them to taxation in the counties, cities, and towns through which they pass. But *I* do not our tax laws impose similar burdens on every individual who owns property in the same counties, cities, & towns? This corporation owns in Bourbon county railroad property worth $119,000, and other property worth $43,000. If an individual owned it he would have to pay an ad valorem tax to the State, and the same amount to Bourbon county. Why should not this corporation be subjected to the same burden? Why should the court lend a listening ear to its mouthing about double taxation, whilst it would be deaf to a citizen making a similar complaint?

This brief has become longer than intended, and I, therefore, only add that the elaborate history given by counsel of the Kentucky Central railroad, its vicissitudes, transfers, litigation, and other troubles, and the decisions of inferior courts, in regard to its affairs, are all *are all* outside of this record and, for that reason, will not be noticed.

Respectfully submitted.

A. DUVALL,
For Appellee.

81 As to appellee's right to damages see conclusion of brief of my associate, Mr. Brent.

And afterwards (to wit), at a court of appeals continued and held for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 23d day of May, 1885—

Order Overruling Petition [for] Reh'g.

The court being sufficiently advised, it is ordered that the petition for a rehearing of this cause be overruled.

On the 9th day of October, 1885, the appellant and plaintiff in error filed in the clerk's office of the court of appeals of Kentucky its writ of error herein from the Supreme Court of the United States and its bond in the following words and figures, to wit:

82 *Bond.*

Know all men by these presents that we, D. M. Comingere, are held and firmly bound unto the County of Bourbon, in the State of Kentucky, in the full sum of twenty-five hundred dollars, to be paid to the said County of Bourbon, its certain attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 28th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a court of appeals of the State of Kentucky, in a suit depending in said court between The Kentucky Central Railroad Company and the County of Bourbon, in the State of Kentucky, in which a final judgment was rendered against the said The Kentucky Central Railroad Company, and the said The Kentucky Central Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid —, and a citation directed to the said County of Bourbon, in the State of Kentucky, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said The Kentucky Central Railroad Company shall prosecute said
83 writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

DAVID A. COMINGERE. [SEAL.]

Sealed & delivered in presence of—
E. L. DECAMP.

Approved by—
STANLEY MATTHEWS,
Associate Justice.

Sept. 28, 1885.

STATE OF KENTUCKY, *Court of Appeals,* } *sct:*

I, Thomas J. Henry, clerk of the court of appeals for the Commonwealth of Kentucky, do certify that the foregoing and annexed eighty-*seven* pages contain a true and complete transcript of the record and proceedings had on the appeal therein set forth of The

Kentucky Central Railroad Company, appellant, against Bourbon County, appellee, together with a copy of the writ of error and supersedeas bond, filed therein on the 9th day of October, 1885, as appear of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office, at the capitol in the
84 city of Frankfort, this 9th day of October, A. D. 1885.

[Seal Kentucky Court of Appeals.]

THOS. J. HENRY, *C. C. A.*

Clerk's fee for transcript	27 00
" seal, &c.	1 00
	$28 00

Notary, &c, $2.00.

85 To the Honorable Stanley Matthews, associate justice Supreme Court of the United States:

And now comes The Kentucky Central Railroad Company, a corporation — under and by virtue of the laws of the State of Kentucky, by its attorney, —— ——, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between the County of Bourbon, in the State of Kentucky, plaintiff, and the said Kentucky Central Railroad Company, defendant, in the court of appeals of the State of Kentucky, being the highest court of law or equity of the said State in which a decision could be had in said suit, and in which a final judgment was rendered against it on the — day of ——, 1885, in said suit, wherein was drawn in question the validity of a statute of and an authority exercised under the
86 United States, and the decision was against their validity, and wherein was drawn in question the validity of a statute of and an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the right, privilege, or exemption set up and claimed under
87 such clause of the said Constitution, all which appears in the record and proceedings in said suit, manifest error hath happened, to the great damage of the said Kentucky Central Railroad Company:

Wherefore it prays for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

J. W. STEVENSON,
WM. GOEBEL,
Attorneys.

Allowed.
STANLEY MATTHEWS,
Associate Justice.

Sept. 28, 1885.

5—1098

88 [Endorsed:] Kentucky Central Railroad Company *vs.* Bourbon County. Petition for writ of error.

89 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of Kentucky before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Kentucky Central Railroad Company and the County of Bourbon, in the State of Kentucky, wherein was drawn in question the validity of — an authority exercised under the United States, and the decision was against their validity, and wherein was drawn in question the validity of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the
90 construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Kentucky Central Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

JOSEPH C. FINNELL,
Clerk Circuit Court of the United States,
District of Ky. (at Covington).

Allowed by—
STANLEY MATTHEWS,
Associate Justice.

Sept. 28, 1885.

91 The United States of America to the County of Bourbon, in the State of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Kentucky, wherein the Kentucky Central Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stanley Matthews, associate justice of the Supreme Court of the United States, this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

STANLEY MATTHEWS,
Associate Justice.

Sept. 28, 1885.

92 On this ninth day of October, in the year of our Lord one thousand eight hundred and eighty-five, personally appeared John H. Stuart before me, the subscriber, W. H. Posey, and makes oath that he delivered a true copy of the within citation to Judge Alvin Duvall, counsel for the County of Bourbon, in the State of Kentucky.

JNO. H. STUART.

Sworn to and subscribed the ninth day of October, A. D. 1885.

[Seal W. H. Posey, Notary Public, Franklin County, Ky.]

W. H. POSEY,
Notary Public for Franklin Co., Ky.

93 *Assignment of Errors & Prayer for Reversal.*

In the Supreme Court of the United States.

THE KENTUCKY CENTRAL RAILROAD COMPANY, Plaintiff in Error,
against
THE COUNTY OF BOURBON, IN THE STATE OF KENTUCKY, Defendant in Error.

The plaintiff in error, The Kentucky Central Railroad Company, assigns as errors committed by the court of appeals of the State of Kentucky to its prejudice herein the following, to wit:

First. Said court erred in sustaining the validity of the act of the Legislature of the State of Kentucky entitled "An act to prescribe the mode of ascertaining the value of the property of railroad companies for taxation, and for taxing the same," approved April 3rd, 1878, because the same is repugnant to the Constitution of the United

States, in that it denies, and was intended to deny, to the plain-
94 tiff in error the equal protection of the laws, and in that it does deprive, and was intended to deprive, the plaintiff in error of its property without due process of law.

Second. And said court erred in sustaining the validity of the act of the Legislature of the State of Kentucky entitled "An act to amend 'An act to prescribe the mode of ascertaining the value of property of railroad companies for taxation and for taxing the same,'" approved April 19th, 1882, because the same is repugnant to the Constitution of the United States, in that it denies, and was intended to deny, to the plaintiff in error the equal protection of the laws, and in that it does deprive, and was intended to deprive, the plaintiff in error of its property without due process of law.

Third. Said court erred in sustaining the validity of the act of the Legislature of the State of Kentucky entitled "An act to prevent extortion and discrimination in the transportation of freight
95 and passengers by railroad corporations, and in aid of that purpose to establish a board of railroad commissioners and define its powers and duties," approved April 6th, 1882, because the same is repugnant to the Constitution of the United States, in that it denies, and was intended to deny, to the plaintiff in error the equal protection of the laws, and in that it does deprive, and was intended to deprive, the plaintiff in error of its property without due process of law.

Fourth. Said court erred, to the prejudice of the plaintiff in error, in not holding and adjudging that by reason of the invalidity of each and all of said three acts of the Legislature of the State of Kentucky, specified in the first, second, and third assignments of error above, the plaintiff in error was not and is not liable for the demands herein sued for by the defendant in error, or any of them.

Fifth. Said court erred severally and separately as to each and all of said three acts of the Legislature of the State of
96 Kentucky, specified in the first, second, and third assignments of error above, in sustaining the validity thereof as against the plaintiff in error, because each of said acts is, and all of them are, repugnant to the Constitution of the United States, in that each of them does, and all of them do, impair the obligation of the contract made between the plaintiff in error and the Commonwealth of Kentucky, and contained in the charter granted by the Legislature of Kentucky to the plaintiff in error, and entitled "An act to incorporate the Kentucky Central Railroad Company," approved February 22nd, 1871.

Sixth. Said court erred, to the prejudice of the plaintiff in error, in not holding and adjudging that it was by reason of said contract contained in said act of the Legislature of the State of Kentucky, entitled "An act to incorporate the Kentucky Central Railroad Company," approved February 22nd, 1871, exempt from the operation of each and all of said three acts of the Legislature of the State of Kentucky, specified in the first, second, and third assign-
97 ments of error above.

Seventh. And said court erred in not holding and adjudg-

ing that the plaintiff in error, by reason of the provisions of said act of the Legislature of the State of Kentucky, approved February 22nd, 1871, and entitled "An act to incorporate the Kentucky Central Railroad Company," does not and is not liable for or to the claims and demands asserted and sued for by the defendant in this action, or any of them.

Wherefore the plaintiff in error, The Kentucky Central Railroad Company, respectfully prays this honorable Court to reverse the judgment of the court of appeals of the State of Kentucky herein rendered and for its costs herein expended.

J. W. STEVENSON,
WM. GOEBEL,
Att'ys for Plaintiff in Error.

98 [Endorsed:] In the Supreme Court of the United States. The Kentucky Central Railroad Company *vs.* The County of Bourbon, in the State of Kentucky. Assignment of errors & prayer for reversal.

Endorsed on cover: Kentucky court of appeals. No. 1098. The Kentucky Central Railroad Company, plaintiff in error, *vs.* The County of Bourbon, in the State of Kentucky. Filed October 15, 1885.

Supreme Court of the United States.

OCTOBER TERM, 1885.

NO. 1098.

THE KENTUCKY CENTRAL RAILROAD COMPANY, *Plaintiff in Error.*

AGAINST } *Motion to advance cause on docket.*

THE COUNTY OF BOURBON,

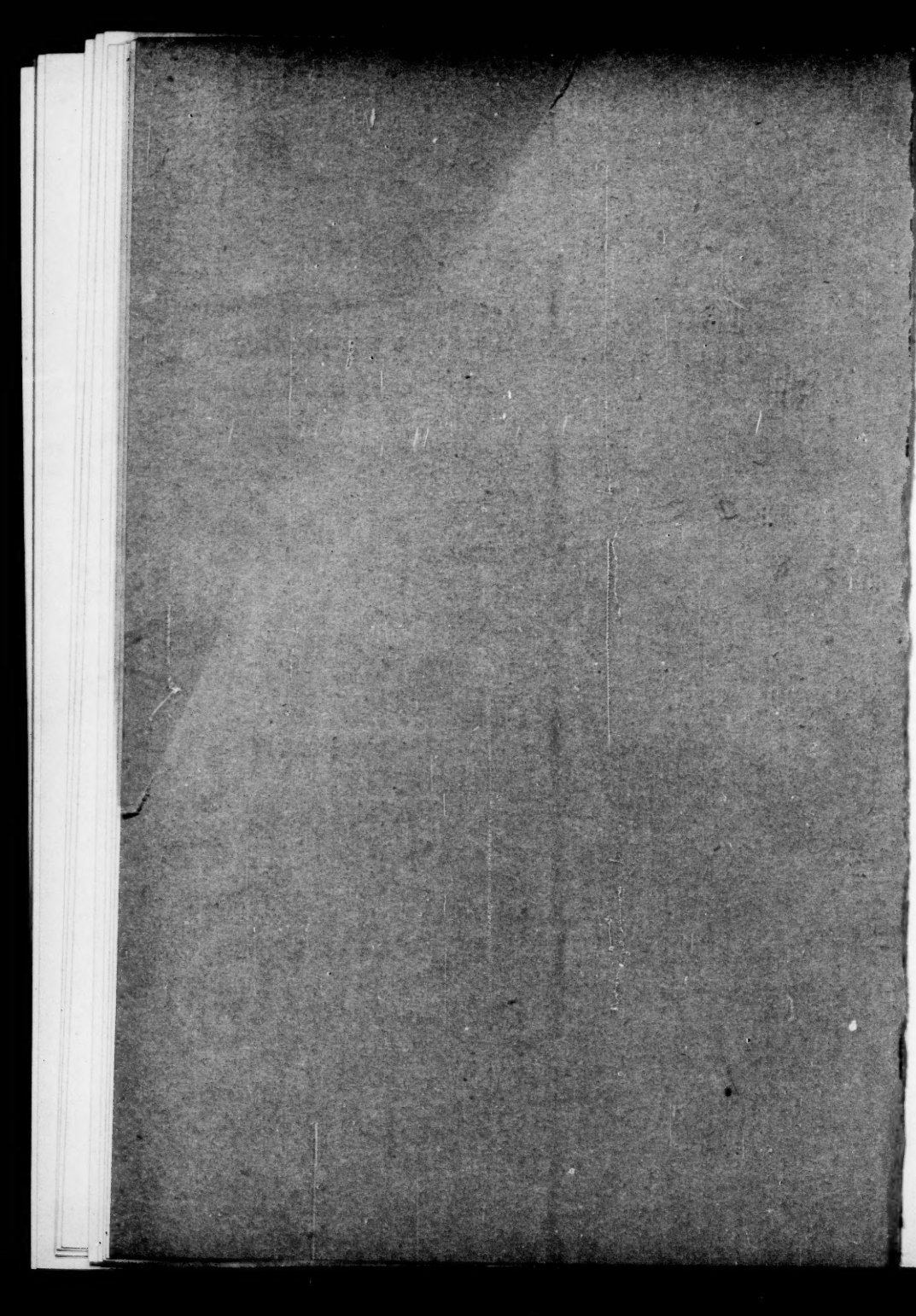
Defendant in Error.

In Error to Court of Appeals of Kentucky.

JOHN W. STEVENSON,

Of Counsel for Plaintiff in Error.

Commonwealth Print, Covington.



Supreme Court of the United States.

OCTOBER TERM, 1885.

NO. 1078.

THE KENTUCKY CENTRAL RAILROAD COMPANY, *Plaintiff in Error.*

AGAINST

Motion to advance cause on docket.

THE COUNTY OF BOURBON, *Defendant in Error.*

In Error to Court of Appeals of Kentucky.

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

The plaintiff in error in the above entitled cause respectfully represents:

That said action was brought for the recovery of alleged delinquent taxes assessed and levied by the State Board of Equalization of Kentucky upon that part of the Kentucky Central Railroad which is in Bourbon County in said State. The assessments were made under and by virtue of an Act of the General Assembly of the Commonwealth of Kentucky, approved April 3, 1878, and entitled "An act "to prescribe the mode of ascertaining the value of the "property of railroad companies for taxation, and for "taxing the same."

Under said act taxes were assessed and levied for and by every city, town, and county through, or into which the Kentucky Central Railroad extends; and many suits, other than this, have been brought and are pending in the Courts of Kentucky to collect said alleged taxes from the plaintiff in error. Of course the assessments are constantly accumulating, and so are the suits. This is one of the series of suits. It was brought in the Bourbon Circuit Court, where judgment was rendered against the plaintiff in error; on appeal, that judgment was affirmed by the Court of Appeals of Kentucky, and on writ of error, the case has been brought here.

The determination of the many suits that have been and are being brought is dependent upon the decision of this Court in this case.

All the cases involve the same questions of Constitutional law.

First: It is maintained that the Kentucky Central Railroad and its appertenances are exempt from taxation by cities, towns, and counties and for any local purpose, by reason of a contract contained in the charter of the plaintiff in error, that limits the exercise of the power of taxation as against the plaintiff in error and its said property; that the act of April 3, 1878, impairs the obligation of said contract, and is in conflict with the Federal Constitution; that consequently the alleged taxes sued for in this action, and in the numerous other like actions, have no legal basis and are void.

Second—The contract contained in said charter limits taxation of plaintiff in error and its said property for State Revenue purposes to a specified tax on every one hundred dollars of capital stock of the corporation. The Act of April 3d, 1878, attempts to authorize, for purposes of State Revenue, the laying of a greater tax, and in a different mode and manner than said contract permits; and, therefore, said act is as to plaintiff in error null and void, because it is violative of the Federal Constitution.

The delay in the settlement of these questions affects to a material extent the collection of State revenue by the Commonwealth; very largely affects and impedes the fiscal



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

THE KENTUCKY CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF BOURBON, IN THE STATE OF KENTUCKY.

By an act approved March 1st, 1847, the "Licking and Lexington Railroad Company" was incorporated. By an act approved Feb. 27th, 1849, the name of the company was changed to the "Covington and Lexington Railroad Company."

March 3d, 1851, this charter was amended, and, among other provisions, is the following.

"That on the first day of January next, after the first declaration of dividends on the capital stock of said railroad company, and on the first day of January thereafter, it shall be the duty of the president and directors of said company to pay into the treasury of this Commonwealth a tax on each one hundred dollars' worth of stock in said railroad company, equivalent to the rate of tax on each one hundred dollars' worth of property for State revenue, and no more; and resident stockholders shall not list their stock in said company for revenue tax, nor be liable to payment of tax on the same in any other mode whatever."

February 22d, 1871, the "Kentucky Central Railroad

Railroad Tax Cases v. The Commonwealth of Kentucky, 115 United States Reports, 321, that no further notice of it need be taken.

Second. The argument of the distinguished jurist, Governor Stevenson (since deceased), in the Kentucky Court of Appeals, was devoted mainly to the support of the first of the two objections mentioned, and the second may, I think, be very safely submitted upon the brief but conclusive argument contained in the opinion rendered by that court, reported in 82 Ky. Reports, 497. But little need be added.

The claim of this railroad company to exemption from the taxation awarded by the judgment in question, is founded exclusively upon the two statutes heretofore mentioned—the clause of the act of March 3, 1851, amending the charter of the original corporation, which declares "it shall be the duty of the president and directors of said company to pay into the treasury of this Commonwealth a tax on each one hundred dollars worth of the *stock* in said railroad company, equivalent to the rate of tax on each one hundred dollars worth of *property* for State revenue, and no more;" and the subsequent act of February, 1871, by which the Kentucky Central Railroad Company was incorporated "for the purpose of operating the Covington & Lexington Railroad (originally the Licking & Lexington Railroad), of which they are the owners by purchase under judgment and order of sale of the Fayette Circuit Court; and shall have, and are hereby invested with, all the powers, privileges, rights, immunities and franchises, subject to the restrictions and limitations contained in the original charter of incorporation authorizing the construction of said railroad, and the various acts amendatory thereof: *Provided*, Nothing in this act shall be held to subject the said powers, rights," &c., to the operation of the act of February 14, 1856, reserving the right to repeal charters, &c.

Now, did the clause of the act of March, 1851, above quoted, create a *contract* between the Commonwealth and the Covington and Lexington Railroad Company, by which the former forever relinquished to the latter, without consideration, all right of taxation other than that prescribed in the act, and did this so-called *contract* pass to, and vest in, the Kentucky Central Railroad as one of the "privileges," "rights," or "immunities" referred to in the act of February, 1871, and which thereby passed beyond the domain of legislative control?

The doctrine is well settled in Kentucky that the Legislature may create corporations whereby certain liabilities and duties are assumed by the latter, and, in consideration of which, rights and privileges are granted that no legislation, without the consent of the parties interested, can impair or diminish. (*Louisville, Cin. & Lex. R. R. Co.* v. *Commonwealth*, 10 Bush, 48.) But, in the same case, it is said that "the taxing power of the State is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms."

"In the case of the Providence Bank v. Billings (4 Peters, 514), Chief Justice Marshall delivering the opinion of the court, said, 'We must look for the exemption in the language of the instrument, and if we do not find it there, it would be going very far to insert it by construction.'

"The mere imposition of taxes at the time a charter is granted or afterwards upon the property of a corporation will not authorize the court to assume that the Legislature has contracted that no additional taxation shall be imposed, neither upon the property owned by the corporation at the time of the grant or afterwards acquired."

The same doctrine has been repeatedly recognized by this court. In *Baily* v. *Maguire*, 22 *Wall.*, 227, it is said: "It is never for the interest of the State to surrender the power of taxation, and an intention to do so will not be